

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**DINA CAPITANI**

**Plaintiff and Counter-Defendant**

**v.**

**Civil Action No. 3:19-cv-00120**

**WORLD OF MINIATURE BEARS, INC.,  
individually, and d/b/a MINIBEARGEMS,  
and MINI BEAR GEMS, and  
MINIBEARGEMS & GIFTS, INC.,  
individually, and d/b/a MINIBEARGEMS  
and MINI BEAR GEMS**

**Defendants and Counter-Plaintiffs.**

**[PROPOSED] COUNTER CLAIM FOR DECLARATORY RELIEF**

\_\_\_\_COME NOW the Defendants, World of Miniature Bears, Inc. and MiniBears Gems & Gifts, Inc., by and through counsel, and assume the role of Counter-Plaintiffs, and for their complaint against Counter-Defendant Dina Capitani state as follows:

Parties

1. Counter-Plaintiff World of Bears, Inc. is a Florida Corporation with its principal place of business in Miami, Florida.
2. Counter-Plaintiff MiniBears Gems & Gifts, Inc., Inc. is a Florida Corporation with its principal place of business in Miami, Florida.
3. Counter-Defendant Dini Capitani is a resident of Nashville, Tennessee.

Jurisdiction and Venue

4. This Court has jurisdiction over this cause brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.
5. Venue is proper in the Middle District of Tennessee under 28 U.S.C. § 1391(e)(3) because the Counter-Defendant resides in this district.

**COUNT I**  
**Declaratory Judgment Regarding Violation of Due Process Clause**

6. Counter-Defendant Dini Capitani and Geoffrey and Cathy Roebuck entered into a Licensing Agreement for use of illustrations on their products. (Doc. 1, PageID#4)

7. Counter-Defendant Dini Capitani filed suit against the Roebucks for breach of contract and copyright violations in the United States District Court for the Middle District of Tennessee in the case of Capitani v. Roebuck, et al., No. 3:16-cv-00740, and obtained a default judgment. (Doc. 1, PageID#4-6; Doc. 1-12, Ex. 7, PageID 61)

8. Paragraph 7 of the Order granting default judgment in favor of Ms. Capitani provides an injunction that includes non-parties as follows:

Defendants, their agents, servants, employees, and all persons acting under their permission or authority, as well as all persons acting in concert, privity, or association with them, be permanently enjoined and restrained from infringing, in any manner, Plaintiff's works at issue here, pursuant to 17 U.S.C. §502.

(Doc. 1-12, PageID62)

9. Counter-Plaintiff MiniBears Gems & Gifts, Inc. was a bona fide purchaser for value of certain wall clocks with cat and dog illustrations which it believes were manufactured prior to the order issued in the case of Capitani v. Roebuck, et al., No. 3:16-cv-00740.

10. Counter-Plaintiffs had no knowledge of the case of Capitani v. Roebuck, et al., No. 3:16-cv-00740, did not have an opportunity to confront their accuser, cross examine witnesses, conduct discovery, or have a hearing on the merits.

11. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires that the Counter-Plaintiffs receive a full and fair, impartial adjudicatory proceeding-both in appearance and in reality-that is free of any prejudgment on key factual and legal issues, and with a hearing on the merits of the allegations in the Counter-Defendant's Complaint filed in this action.

12. The Counter-Defendant, Dini Capitani's, order obtained by default judgment in the Roebuck case is overly broad, and therefore, violates the due process rights of the Counter-Plaintiffs to a fair and impartial proceeding by having their rights decided by an order where they had no opportunity to confront

their accuser in a hearing on the merits.

13. As a result, Counter-Plaintiffs MiniBears Gems & Gifts, Inc. and World of Bears, Inc. are entitled to declaratory judgment on the scope of the order granting default judgment, and injunctive relief to protect their liberty interests and constitutional rights from the overreaching scope of the order attached as Exhibit 7 to the Complaint.

### **Prayer for Relief**

WHEREFORE, Counter-Plaintiff MiniBears Gems & Gifts, Inc. and Counter-Plaintiff World of Bears, Inc. respectfully request:

1. That the Counter-Defendant be required to file her Answer within the time prescribed by law;
2. That this Court enter a Declaratory Judgment that through the order for default judgment the Counter-Defendant has violated the Counter-Plaintiffs' right to due process where Counter-Plaintiffs are denied a fair and impartial proceeding in having their rights decided in a hearing where they have an opportunity to confront their accuser.
3. That this Court issue a permanent injunction against the Counter-Defendant's use and continued use of the order found in Exhibit 7 of her Complaint in this matter to protect the liberty interests of the Counter-Plaintiffs in not being subject to the binding judgments in another case where the Counter-Defendant did not establish any meaningful contacts, ties, or relations to the defaulting parties prior to obtain an overly broad injunction.
4. For such other relief as the Court deems proper and just.

Respectfully submitted,

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Attorney for Counter-Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of September, 2019, I electronically filed the [Proposed] Counter-Claim for Declaratory Judgment with the Clerk of this Court using the CM/ECF system which will automatically send email notification of such filing to the following parties who are CM/ECF participants:

Autumn L. Gentry, Esq.  
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Nashville, Tennessee 37219  
Attorney for Plaintiff Capitani

/s/ John Beam  
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John A. Beam, III